



August 25, 1999

Mr. Terrence S. Welch
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR99-2386

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127027.

The Town of Flower Mound (the "town") received two requests for information concerning the engineering report by Kimley-Horn and Associates, Inc. recommending drainage improvements to the Pecan Acres Subdivision. You argue that the draft report is excepted from disclosure by section 552.111 of the Government Code. You have submitted the report you seek to withhold.

Section 552.111 excepts "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). This exception applies not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981).

Section 552.111 also excepts from required public disclosure preliminary *drafts* of documents if those documents are related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final

documents. *See* Open Records Decision No. 559 (1990). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. ORD 615. However, when such factual matter is contained in the final version of the document, the release of the final version satisfies this requirement. *Id.*

We have reviewed the submitted information and conclude that section 552.111 excepts the draft report from public disclosure, provided any factual information contained in the draft is also contained in the released final version.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 127027

Encl.: Submitted documents

cc: Mr. Harry J. Stearns
3311 Sycamore Dr.
Flower Mound, Texas 75028
(w/o enclosures)

Mr. Brian Cornell
5005 Dogwood St.
Flower Mound, Texas 75028
(w/o enclosures)